



# Drug and Alcohol testing under the Building Code 2013

Changes have been made to the Building Code 2013 requiring contractors to have a comprehensive policy for managing drug and alcohol issues in the workplace which includes mandatory drug and alcohol testing on Commonwealth funded projects.

## **WHEN AND WHERE DO THESE NEW REQUIREMENTS APPLY?**

The changes to the Building Code 2013 commence on 16 October 2015.

### **GENERAL DUTY APPLICABLE TO ALL CONTRACTORS ON ALL PROJECTS COVERED BY THE BUILDING CODE**

From 16 October, building contractors covered by the Building Code must ensure that their management of drugs and alcohol in the workplace is reflected in their WHS&R management system. This requirement will help ensure that no person attending the site to perform building work does so under the influence of alcohol or other drugs.

### **DRUG AND ALCOHOL TESTING IS MANDATORY FOR PRINCIPAL CONTRACTORS ON COMMONWEALTH FUNDED PROJECTS THAT MEET THE FINANCIAL THRESHOLD**

Principal contractors must have a fitness for work policy to manage alcohol and other drugs in the workplace which includes drug and alcohol testing.

A fitness for work policy is required on Commonwealth funded projects with the following financial threshold:

- where the value of the Commonwealth's contribution to the project is at least \$5,000,000 and represents at least 50% of the total construction project value; or
- where the Commonwealth's contribution to the project is at least \$10,000,000.

The fitness for work policy must address how those on site, including employees of the principal contractor, subcontractors and their employees and others, will be required to comply with the relevant fitness for work policy (ie. through contract or some other enforceable means).

The fitness for work policy with drug and alcohol testing is not required on private projects or on State government projects that do not meet the applicable threshold for Commonwealth funding.

## **WHAT ARE THE MINIMUM STANDARDS EXPECTED IN RELATION TO DRUGS AND ALCOHOL?**

The fitness for work policy of the principal contractor must require the use of an objective medical testing method to detect the presence of drugs or alcohol in a worker's system. It must also outline which detection method is to be used on the project and outline the processes in place when a positive test is returned.

There is no mandatory form of testing. Urine testing and saliva testing are both permitted.

Some information on the minimum requirements is outlined below:

### **WHAT SUBSTANCES ARE REQUIRED TO BE TESTED FOR?**

All of the following substances must be tested for by the principal contractor:

- Alcohol
- Opiates
- THC
- Cocaine
- Benzodiazepines
- Amphetamines
- Methamphetamines

### **WHO IS TO BE TESTED?**

Principal contractors must outline in their fitness for work policy the procedures in place for the selection of personnel to be tested, including staged selection across a worksite or random selection for testing if the entire workforce is not to be tested in a testing round.

As a minimum, frequent and periodic drug and alcohol testing of both construction workers and site office workers should be conducted as follows:

- where there are less than 30 workers on site – at least 10% of the workforce;
- where there are 30 to 100 workers on site – a minimum of 5 workers per month; and
- where there are greater than 100 workers on site – a minimum of 10 workers per month.

### **HOW FREQUENTLY IS DRUG AND ALCOHOL TESTING REQUIRED?**

The minimum frequency for random drug and alcohol testing by principal contractors is at least once per month. Principal contractors must also outline their procedure for targeted testing of higher risk activities, voluntary testing and for-cause testing.

### **WHAT IS THE LEVEL OF TOLERANCE FOR DRUGS AND ALCOHOL?**

In respect of each substance listed above, subject to testing detectable levels, there is a zero level tolerance.

### **WHAT MUST HAPPEN IF A PERSON TESTS POSITIVE TO ANY OF THE SUBSTANCES BEING TESTED FOR?**

When a person returns a positive result for any of the substances listed they will be deemed not to be fit for work. Principal contractors must outline in their policy how a person who returns a positive result will be prevented from performing work until they can prove they are fit to return to work, and other processes that will apply in the event of a positive result or deemed positive result (i.e. a failure to submit to a test).

Principal contractors must also outline in their fitness for work policy how workers who attend for work affected by drugs or alcohol will be counselled and assisted, apart from any disciplinary process that might apply.

### **HOW WILL FWBC MONITOR THE DRUG AND ALCOHOL SCREENING REQUIREMENTS?**

FWBC will audit a principal contractor's fitness for work policy to ensure that the minimum standards for drug and alcohol testing are adequately addressed. FWBC will also audit projects to ensure that the drug and alcohol requirements of the fitness for work policy are being implemented.

### **ARE THERE SANCTIONS FOR NON-COMPLIANCE WITH THE DRUG AND ALCOHOL TESTING REQUIREMENTS?**

Yes. Where serious breaches occur the Director of FWBC reports them with a recommendation for sanction to the Minister for Employment, who in turn may impose exclusion sanctions. The Director can recommend a sanction where a contractor has failed to comply with the Building Code and the failure cannot be satisfactorily rectified.

### **WHERE CAN I GET FURTHER INFORMATION?**

On Friday 18 September 2015, the then Minister for Employment Eric Abetz issued a media release announcing that the government has introduced amendments to the Building Code to improve workplace safety for construction sites. For further information on these amendments please see:

- Media release <https://ministers.employment.gov.au/abetz/government-building-code-now-requires-drug-and-alcohol-testing-policies-construction-sites>
- Amendments to the Building Code and the Explanatory Statement <https://www.comlaw.gov.au/Details/F2015L01462>

### **WHERE CAN I GO FOR ADVICE?**

FWBC has responsibility for ensuring compliance with the Building Code. FWBC will provide advice to assist you to meet the requirements of the Building Code.

For further information on the Building Code and what it means for your company:

- Visit FWBC's website at [www.fwbc.gov.au/building-code](http://www.fwbc.gov.au/building-code)
- Call the FWBC Hotline on 1800 003 338
- Email your enquiries to [codeenquiries@fwbc.gov.au](mailto:codeenquiries@fwbc.gov.au)
- Visit the Department of Employment's website at [www.employment.gov.au/building-code](http://www.employment.gov.au/building-code)

